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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

INTERNATIONAL WORKERS ORDER, INC., Petitioner, v. THE PEOPLE OF THE STATE OF NEW YORK, by ALFRED J. BOHLINGER, Superintendent of Insurance of the State of New York.	No.
HERMAN A. SELIGSON, MARJORIE DACOSTA, JACOB HOLMSTOCK, ZACHAR SHPAK, ISIDORE SIEGEL, EARL WHEELER, and WALTER HAGELBERG for the INTERNATIONAL WORKERS ORDER POLICYHOLDERS PROTECTIVE COMMITTEE, Intervenors.	

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Petitioner, International Workers Order, Inc., respectfully prays that a writ of certiorari issue to review the final order of the Court of Appeals of the State of New York entered on April 23, 1953.

Opinions Below

An opinion was written by Mr. Justice Henry Clay Greenberg of the State Supreme Court, which is reported

at 199 Misc. 941. The opinion of the Appellate Division of the Supreme Court is reported at 280 App. Div. 517. The opinion of the Court of Appeals is reported at 305 N. Y. 258.

Jurisdiction

The final order of the Court of Appeals was entered on April 23, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3).

Statutes Involved

The relevant provisions of the various statutes are set forth in Appendix A, *infra,* pages 39-42, as follows:

(a) New York Insurance Law § 511(e) and (f);

(b) New York Insurance Law § 513;

(c) 18 U. S. C. 2385;

(d) New York Penal Law §§ 160, 161;

(e) New York Penal Law § 671.

STATEMENT

A

The Proceedings Below

This proceeding was instituted by the Superintendent of Insurance of the State of New York pursuant to Sections 511(e) and (f) and Section 513 of the Insurance Law of New York seeking the liquidation of petitioner and the dissolution of its corporate charter.

The proceeding was initiated after an examination and administrative hearing under the pertinent provisions of the Insurance Law. Following a hearing before the State

Supreme Court a final order of liquidation was entered granting the relief prayed for by the Superintendent, but staying the dissolution and liquidation provisions of the order until petitioner has exhausted all available appeals. At the hearing the intervention of a policyholders protective committee was granted.

Petitioner was enjoined from the transaction of all business except under the joint supervision of the Superintendent of Insurance and the officers of petitioner. This interim injunction has been continued in full force and effect.

The order of liquidation was affirmed by the Appellate Division and by the Court of Appeals, although the original grounds asserted by the Superintendent as the basis for liquidation were modified in part.

B

Statement of Facts

Petitioner is a fraternal benefit society which has functioned in New York since 1930 and is licensed in nineteen states and the District of Columbia. At the time of the institution of the proceedings it had 162,000 members. It had assets of over six and a half million dollars, mostly in government, state and municipal bonds. Its margin of safety above statutory standards was 40.73% (Resp. Ex. CC).*

During the year of 1950 the IWO paid out $739,307.62 in death benefits, $360,812 in sick and accident benefits and $674.01 in matured endowments, totalling $1,100,793.63 (Resp. Ex. KD). Over the years of its existence from 1930 to 1949, the IWO has paid out a total of $13,654,325.74 in benefits to its members (Resp. Ex. JY).

The IWO is concededly a solvent fraternal benefit society in a sound and strong financial condition. After extensive

* Petitioner's Exhibits are all marked "Resp. Exhibits."

examination into the affairs of the IWO the Deputy Superintendent concluded that "there is no claim here that the Order is in any financial difficulties, or that its economic position is in any way insecure" (fol. 779).

The department representative who conducted the lengthy examination and prepared the report which this proceeding is based upon testified at the hearing that his recommendation was "completely removed from financial transactions" (fol. 9158). He further testified that the company was not only liquid and solvent, but that there was "no practical danger" of its becoming insolvent (fol. 8708).

Petitioner has developed both an extensive program of low-cost insurance for low-income families and varied programs designed to meet the cultural and social needs of its members. The bulk of insurance in force is in policies averaging less than $1,000, representing substantially the only insurance carried by thousands of families in this state and throughout the country (fol. 1445). The IWO insurance program is composed of life insurance plans, sickness, tuberculosis and dismemberment benefits, as well as various non-contractual benefits. It is the only fraternal benefit society which writes insurance without discrimination against Negroes and also covers workers in hazardous employment (fol. 9518). The IWO is an interracial organization. Its Douglas-Lincoln Society is dedicated to meeting the social, fraternal and insurance needs of the Negro members of the IWO.

The IWO is not a commercial insurance company. It is a fraternal benefit society offering through its lodges and national societies a multitude of cultural, educational and social activities to its members. Over 100 rank and file members of the IWO testified in affidavits submitted to the court on the importance of these fraternal activities in their daily life (fols. 812-1435). These affidavits were unchallenged by the Superintendent of Insurance, although opportunity was given to him by the court to give counter-affidavits or to cross-examine the affiants. These affidavits

represent the only evidence in the record as to the everyday life and activity of IWO lodges at the present time. They present a cross-section of the daily activities of the IWO as experienced by the average member of the organization and the communities of which the lodges are a part. The affidavits reveal that the IWO lodges in addition to collecting dues and servicing the insurance benefit program, initiate many social and cultural activities, including dance groups (see for example fol. 1187), children's activities (see for example fol. 873), cultural festivals (see for example fol. 1406), drama groups (see for example fol. 1067), picnics and outings (see for example fol. 1109), choral groups (see for example fol. 1074), literary appreciation discussions (see for example fol. 1198), cultural lectures (see for example fol. 861), concerts (see for example fol. 1002), and other cultural and social activities too numerous to mention.

The Superintendent of Insurance grounded his petition for liquidation and dissolution of the IWO upon an alleged violation of subdivisions (e) and (f) of Section 511 of the Insurance Law. Section 513 of the Insurance Law provides that the Superintendent may apply for an order of liquidation upon any one or more of the grounds specified in Section 511. Section 511(e) thus permits an application for liquidation where an insurer "is found, after an examination, to be in such condition that its further transaction of business may be hazardous to its policyholders or to its creditors or to the public". Subdivision (f) of Section 511 thus permits an application for liquidation where an insurer has "wilfully violated its charter or any law of the state".

The Superintendent's petition contained four grounds:

1. The first ground sought to justify liquidation under Section 511(e) of the Insurance Law on the ground that the IWO was a "political hazard".

2. The second ground sought to justify liquidation on the basis that the political opinions, beliefs and affiliations of the IWO rendered it a "financial hazard" within the meaning of Section 511(e) of the Insurance Law.

3. The third ground sought to justify liquidation on the basis of alleged violations of the Federal Smith Act and the State Criminal Anarchy Law by the IWO.

4. The fourth ground sought to justify liquidation on the basis of an alleged violation of charter pursuant to Section 511(f) of the Insurance Law.

The gravamen of the Superintendent of Insurance's claim was that petitioner was Communist-dominated. But in this he relied almost entirely on literature that was distributed and on statements made between 1930 and 1935. The motivation which prompted this proceeding may be best understood by an examination of the report of the examiner which preceded it.

That report, after commenting that publications of the Order contained material critical of the foreign policy of the United States and favorable to the Soviet Union (fol. 194), states:

> "While the foregoing may not represent an affirmative subversive act, yet there may be discerned therein a plan to accomplish by indirection the same result as would be achieved by a direct subversive act" (fol. 321).

To the examiner these opinions were "alarming" (fol. 722). This is administrative censorship in clear violation of the First Amendment.

The examiner's report considers then, at some length, pamphlets (fols. 482-502, Pet. Ex. 26; fols. 502-14, Pet. Ex. 27) issued in 1932; a speech printed in 1933 (fols. 527-34, Pet. Ex. 29); a report issued in 1934 (fols. 535-55); many extracts from *5 Years I. W. O*, issued in 1935 (fols. 644-716, Pet. Ex. 20).

A survey of the testimony of the witnesses called by the Superintendent reveals a similar pattern. We submit in Appendix B, p. 43, a list of their names with the dates of the period covered by their testimony insofar as it relates to petitioner.

Of all these witnesses only Cvetic testified to anything which occurred later than 1945. And his testimony amounted to no more than a claim of affiliation between certain officers of the Order and the Communist Party in its general activities (see fols. 7052-57, 7140, 7178, 7264-65).

It is obvious, therefore, that this proceeding is based upon the assumption that it is proper to liquidate an insurance company because of political opinions considered obnoxious by the Superintendent of Insurance and, thus far, by the courts.

With respect to the contention that the conduct of the business was hazardous (Ground No. 2), the Superintendent, in his petition (fols. 87-9) as well as at the trial, claimed only the following: that because of the listing of petitioner as subversive by the Attorney General of the United States (a listing later held improper by this Court—*IWO* v. *McGrath*, 341 U. S. 123), there had been a decline in membership from 183,000 to 162,000 and that in the event of deterioration of relations with the Soviet Union there might be a further decrease. No evidence, however, was adduced at the hearing to show that there had been any such loss of membership as to justify an inference that the Order might become insolvent. On the contrary, the examiner testified that he had not found the loss which occurred to be alarming (fols. 8851-52). And it was undisputed that various other fraternal orders had lost membership during the same period (Resp. Exs. CE, CF). See Appendix C, p. 44. Moreover, during the period following the listing by the Attorney General (1947-50) the assets of the organization grew from $4,678,000 to $6,670,000 (Resp. Ex. JN).

The Superintendent further made the claim that there was a hazard because petitioner's officers might, at Communist command, embezzle the assets of the Order and use them for Communist purposes!

But there never was any charge or proof that any officer had ever used any property of the Order for Communist purposes.

No evidence whatsoever was adduced in support of the claim that petitioner had violated the two criminal statutes referred to by the Superintendent in his petition (Ground No. 3). The Superintendent made no attempt to prove that petitioner had ever advocated the overthrow of the government by force, claiming only that its sympathetic association with the Communist Party justified a finding of such advocacy. Indeed, the examiner expressly stated in his report that he had found no evidence of an affirmative subversive act (fols. 8865-66); one of the Superintendent's chief witnesses, George Powers, testified that he had known of no advocacy of the violent overthrow of the government by the IWO or its members (fols. 2905, 2907). The Superintendent, however, relied on the testimony of one Cvetic, who testified that he saw some Communist literature "displayed" in some unspecified lodge in Western Pennsylvania (fols. 7246-56). He did not even testify that this material was sold or used as a guide to action (cf. *Dennis* v. *United States,* 341 U. S. 494).

Finally, to support the claim of charter violation (Ground No. 4) the Superintendent relied on the "domination" of the Order by the Communist Party. But there was no showing that the insurance activities of the Order were not being carried on in accordance with the charter and the law.

In discussing the reasons for granting the writ we shall further discuss the evidence.

Questions Presented

1. Whether the Insurance Law of New York, if construed as authorizing liquidation and dissolution of a fraternal benefit society for reason of the political opinions, beliefs or affiliations of the society or its officers, is in violation of the right to freedom of speech, press, and assembly as guaranteed by the Fourteenth Amendment.

2. Whether the Insurance Law of New York, if construed as authorizing liquidation and dissolution of a fraternal benefit society for reason of the political opinions, beliefs or affiliations of the society or its officers, is vague and indefinite, in violation of the due process clause of the Fourteenth Amendment.

3. Whether there was any evidence which, consonant with due process, could justify a finding that a continuation of petitioner's business constituted a financial hazard.

4. Whether there was any evidence which, consonant with due process, could justify a finding that petitioner had violated either 18 U. S. C. 2385 or New York Penal Law Sections 160 and 161.

5. Whether liquidation upon the grounds advanced to support the charge that petitioner had violated either 18 U. S. C. 2385 or New York Penal Law Sections 160 and 161 abridged petitioner's right to freedom of expression as guaranteed by the due process clause of the Fourteenth Amendment.

6. Whether the reliance by the Court of Appeals on New York Penal Law Section 671, which had not been referred to in this proceeding prior to the opinion of the Court of Appeals, was a denial of due process.

7. Whether there was any evidence which, consonant with due process and the established rules of law on the subject, could justify a finding that petitioner had violated its charter.

8. Whether it was a denial of due process to direct liquidation of petitioner before making a determination with respect to the possibility of obtaining reinsurance for petitioner's policyholders.

9. Whether the decree liquidating and dissolving petitioner, a financially sound and flourishing fraternal benefit society, and the consequent confiscation of millions of dollars of insurance property represents a denial of due process of law.

Reasons for Granting the Writ

1. The decision of the State Court of Appeals, insofar as it construes the Insurance Law of New York as authorizing the liquidation and dissolution of the society for reason of the political opinions, beliefs or affiliations of the society or its officers, is in violation of the right to speech, press, and assembly as guaranteed by the Fourteenth Amendment. It is in conflict with the principles announced by this Court in *Niemotko* v. *Maryland*, 340 U. S. 268, and *Kunz* v. *N. Y.*, 340 U. S. 290.

2. The decision of the State Court of Appeals, insofar as it construes the Insurance Law of New York as authorizing the liquidation and dissolution of the society for reason of the political opinions, beliefs, or affiliations of the society or its officers, is vague and indefinite in violation of the due process clause of the Fourteenth Amendment. It is in conflict with the principles announced by this Court in *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495.

3. The decision of the State Court of Appeals, insofar as it affirmed the Second and Third Grounds of liquida-

tion, constituted judicial fiat without support in the evidence and in violation of petitioner's right to due process of law. It is in conflict with the principles announced by this Court in *Buchalter* v. *New York*, 319 U. S. 427.

4. The decision of the State Court of Appeals, insofar as it affirmed the order of liquidation for advocacy of the overthrow of the government by force, denies petitioner's right to due process of law and is in conflict with the principles announced by this Court in *Dennis* v. *United States*, 341 U. S. 494, and *deJonge* v. *Oregon*, 299 U. S. 353.

5. The decision of the State Court of Appeals, insofar as it affirmed the order of liquidation for violation of New York Penal Law Section 671, denies petitioner's right to due process of law and is in conflict with the principles announced by this Court in *deJonge* v. *Oregon*, *supra*, and *Cole* v. *Arkansas*, 333 U. S. 196.

6. The decision of the State Court of Appeals, insofar as it affirmed the order of liquidation for charter violation, constituted judicial fiat without support in the evidence and contrary to established New York law and is in violation of petitioner's right to due process of law.

7. The decision of the State Court of Appeals, insofar as it affirmed the order of liquidation without giving petitioner a hearing on the issue with regard to the reinsurability of the policyholders, is in violation of petitioner's right to due process of law.

8. The decision of the State Court of Appeals, insofar as it affirmed the remedy of liquidation of a financially sound and flourishing fraternal benefit society with the consequent confiscation of millions of dollars of insurance property, violates due process of law. It is in conflict with the principles announced by this Court in *NLRB* v. *Express Publishing Co.*, 312 U. S. 426, and *May Department Stores Co.* v. *NLRB*, 326 U. S. 376.

I

The statute, if construed to authorize liquidation for reason of political beliefs, opinions or association, violates the rights of press, speech and assembly and is vague and indefinite.

The Insurance Law of New York, as construed by the State Court of Appeals to authorize the liquidation and dissolution of a fraternal benefit society by reasons of the political opinions, affiliations or beliefs of its officers or of the society itself, violates the rights of freedom of speech, press, assembly and association as guaranteed by the Fourteenth Amendment, *Niemotko* v. *Maryland,* 340 U. S. 268, and *Kunz* v. *N. Y.,* 340 U. S. 290, and is vague and indefinite in violation of the due process clause, *Joseph Burstyn, Inc.* v. *Wilson,* 343 U. S. 495.

A. The action of the state courts is grounded upon a policy of liquidation for reason of political beliefs, affiliations and associations.

It is important for this Court to realize that the Superintendent of Insurance—and in this he was supported by the lower state courts—predicated his dissolution of petitioner primarily on his contention that the political activities of petitioner created a "hazardous condition" permitting liquidation. The Court of Appeals, while rejecting this position, has in effect permitted the same result to be accomplished. From the very institution of the proceeding it was crystal clear that the Superintendent as a state officer sought to invoke the machinery of the statute to dissolve an association of some 160,000 members solely and exclusively because of the alleged political attitudes of its officers or the society itself.

The proceeding was instituted under the examination provisions of the Insurance Law of New York. The last

regular triennial report upon examination found the society in a sound and solvent business condition (Resp. Ex. BY). Following this report an extraordinary examination was ordered into the fraternal affairs of the petitioner (fol. 112). This report was prepared by an examiner of the Insurance Department (fol. 114). The examination was instituted as a result of the listing of petitioner as "subversive" by the Attorney General of the United States, a listing subsequently considered by this Court in *IWO* v. *McGrath*, 341 U. S. 123 (fols. 8623-26). The report consisted of an examination of the alleged political opinions, activities, associations and affiliations of the officers, past and present, of this society and concluded that these associations, affiliations, opinions and beliefs rendered the society politically "hazardous". The examiner consequently recommended the liquidation and dissolution of this society (fol. 731).

A hearing on the report was requested by the IWO, pursuant to Section 30 of the Insurance Law. Following this hearing a special Deputy Superintendent sustained the conclusions of the report (fol. 739). The Deputy Superintendent clearly stated the crux of the Superintendent's complaint:

> "There are stated statutory grounds for liquidation (Sections 511, 513) and amongst them is included the provision that the Superintendent may apply for an order directing liquidation if the insurer 'is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public'. *There is no claim here that the Order is in any financial difficulties or that its economic position is in any way insecure. Hence, the ultimate question remains whether solely because it is a medium or unit of Communist propaganda and organization, 'its further transaction of business will be hazardous'*" (fol. 779). (Emphasis added.)

Pursuant to Section 513 of the Insurance Law, in accordance with the conclusions of the Deputy Superintendent,

the Superintendent filed a petition for liquidation and dissolution of the IWO. The petition of the Superintendent set forth for the first time the legal rationale upon which he relied in order to sustain this admittedly unprecedented request for liquidation and dissolution. The petition contained four grounds upon which the relief was based (see Statement of Facts, *supra,* at pp. 5-6).

Each of the stated grounds upon which the request for liquidation rested represented an attempt to justify the same stated objective, namely, the liquidation and dissolution of a society solely because of alleged political opinions, affiliations and beliefs.

The course of litigation through the New York State courts successively stripped from this objective the protective "legal" rationales. Throughout the entire proceeding the all-inclusive theory of the Superintendent was that the term "hazardous" in Section 511(e) of the Insurance Law contained within its confines the authority for the dissolution and liquidation of a financially sound but "politically hazardous" society.

The IWO maintained from the outset that the statute in no way authorized this novel policy of political liquidation, pointing out that the term "hazardous" referred only to *financially* hazardous activities. The IWO further argued that any contrary construction of the statute would render it unconstitutional both under the State and Federal Constitutions. The IWO emphasized that this new and hitherto uncharted path leading toward the liquidation of organizations of Americans on the basis of political opinions or activities distasteful to those in positions of power and authority could not under our constitutional scheme of government be enunciated in the first instance by an administrative or judicial officer. It was at a minimum the responsibility of the legislative arm of government.

Throughout the proceeding the Superintendent brushed aside this argument with the plea that the exigencies of the "cold war" required an abandonment of previously rigorously enforced concepts of constitutional law. The New York Court of Appeals in reviewing the decree of liquidation and dissolution upheld the contention of the IWO that the term "hazardous" could not support or justify a policy of political liquidation, and referred, as the IWO had consistently maintained, solely to questions of financial hazard. Hence, the Court of Appeals rejected the central theory upon which the Superintendent had proceeded in both the administrative hearing and the trial in Special Term.

However, although the state courts sustained the central legal argument of the IWO, they sought to find other legal justification for a policy of political liquidation.

Thus, the Court of Appeals sustained the second ground * of the Superintendent's petition, the charge of the existence of a "financially hazardous" condition. Reliance upon this ground, however, created a serious dilemma for the state courts. The case was not tried before the examiner or Special Term upon a theory that the IWO was "financially hazardous". Both the Deputy Superintendent (fol. 779) and the departmental examiner (fols. 8709, 9158) concluded that the economic position of the IWO was in no way insecure and that financial considerations were in no way involved in the recommendation of liquidation. In order to sustain a finding of "financial hazard" the lower courts were forced to read into the alleged political activities, opinions and affiliations of the officers of the IWO a *presumption* of possible future financial instability. We suggest it is abundantly clear that the second ground for liquidation therefore is merely another way of restating the first ground and must fall with the first ground.

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* The second ground for liquidation is discussed more fully in this petition *infra* at pp. 21-24.

The third ground for liquidation, namely, the charge of violation of the Smith Act and the New York State Criminal Anarchy Law, was another attempt to bolster the disappearing legal justification for a policy of political liquidation.* However, we presume that this third ground has been abandoned as a rationale since the Appellate Division concluded that there was not sufficient evidence to establish violation of the Smith Act or the Criminal Anarchy Law (fol. 12647), and the Court of Appeals in its opinion does not mention or rely upon this third ground. The apparent abandonment of this rationale by the state courts is very understandable in the face of the record in this case and the decision of this Court in *Dennis* v. *United States*, 341 U. S. 494.

The remaining ground for liquidation was contained in the fourth arm of the petition, namely, the charge of charter violation.†

The facts upon which the Superintendent relied to show a "charter violation" were the identical facts upon which the charge of "political hazard" was based and in reality merely represented another way of stating the "political hazard" theory. The Insurance Law of the State of New York simply does not authorize liquidation or dissolution of a fraternal benefit society for reasons of political belief, affiliation or association. It does not even authorize the regulation of the political opinions, beliefs or affiliations of fraternal benefit societies. See Appendix D, pp. 45-51 to this petition.

If an unprecedented legislative policy sanctioning political liquidation may not be read into the word "hazardous", similarly it may not be read into the phrase "charter violation". The New York Court of Appeals has in effect conceded that the legislature of the state never intended the enactment of a policy of political supervision and liquida-

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* The third ground for liquidation is discussed more fully on pp. 24-28.

† The fourth ground for liquidation is discussed more fully at pp. 28-32.

tion. Reliance upon a concept of "charter violation" offends as much against constitutional principles as the Superintendent's main attempt to utilize the term "hazardous".

B. The construction of the statute by the state courts renders the statute unconstitutional in violation of the Fourteenth Amendment.

The interpretation of the statute approved by the state courts vests absolute discretion in state officials to take action in the area of press, speech and assembly.

The decision to liquidate this organization rests primarily upon the expression of certain ideas and opinions by the officers of the association. Among the activities which the Superintendent found disturbing to him include participation in certain public campaigns such as the defense of the Scottsboro defendants (fols. 3473-80) and the extension of public social security (fol. 2786). He has justified his action on the basis of expression of support for public housing (Pet. Ex. 151, January 1947, p. 1), friendly relations with foreign countries (Pet. Ex. 86) and opposition to racial discrimination (Pet. Ex. 155). In addition he disapproves of certain ideas which he finds that the IWO has sought to "implant" in the minds of its members. These ideas include criticism of government (fols. 320-23) and development of "class consciousness" (fols. 723-24). As a result of these findings the Superintendent seeks to dissolve the organization and deprive its thousands of members of their constitutional right of association.

This Court has warned that a statutory construction which vests absolute discretion in a state official, administrative or judicial, in the area of press, speech and assembly without adequate standards and limitations results in a "prior restraint" in violation of the Fourteenth Amendment. The opinion of Chief Justice Vinson in *Niemotko* v. *Maryland*, 340 U. S. 268, is decisive on this question.

See also *Kunz* v. *New York,* 340 U. S. 290; *Saia* v. *New York,* 334 U. S. 558; *Jamison* v. *Texas,* 318 U. S. 413; *Cantwell* v. *Connecticut,* 310 U. S. 296; *Schneider* v. *State,* 308 U. S. 147; *Hague* v. *CIO,* 307 U. S. 496; *Lovell* v. *City of Griffin,* 303 U. S. 444.

In the *Niemotko* case, this Court reversed the convictions, holding that "a license requirement constituted a prior restraint on freedom of speech, press and religion, and *in the absence of narrowly-drawn, reasonable and definite standards for the officials to follow, must be invalid*". (Emphasis added.)

Basic to the court's opinion was the absence of any standards regulating the discretion of the state officials in the critical areas of press, speech and assembly. The Chief Justice pointed out that "no standards appear anywhere, no narrowly-drawn limitations", that there was "no circumscribing of this absolute power". The Court concluded:

> "It thus becomes apparent that the lack of standards in the license issuing 'practice' renders that 'practice' a prior restraint in contravention of the Fourteenth Amendment * * *" (p. 328).

The statute as construed by the court below would permit the liquidation and dissolution of a fraternal benefit society for reasons of political beliefs, activities or affiliations in the absence of any standards or "narrowly-drawn limitations".

The testimony of the Insurance Department Examiner Haley highlights in a striking fashion the constitutional infirmity here involved. The examiner conceded that under the Insurance Law he had no objective standard whatsoever to guide him in evaluating the political opinions or activities of the petitioner or its officers (fols. 8795-96, 9050-52). The examiner was required to admit that in this most delicate area, the field of our "preferred liberties" (cf. *Thomas* v. *Collins,* 323 U. S. 516), the statute does not provide the slightest standard, limitation or criterion to guide

the officials responsible for its application and enforcement. When asked:

> "Did you have any such external objectives by which to judge or measure?"

the examiner replied (fol. 9035):

> "No, there is none that I know of, Mr. Weissman, in existence."

He repeatedly conceded the total lack of any standards or limitations whatsoever (fols. 8795-96):

> "Q. Incidentally, Mr. Haley, had you ever had any instructions from the office or any rules or regulations by which to determine what was American and what was un-American? A. No.
>
> "Q. You just used your own— A. My own judgment.
>
> "Q. Your own judgment? A. That's right.
>
> "Q. Just like you would determine whether or not an investment in a certain corporation would or would not be sound. Is that right? A. Well, there I would have some corroboration.
>
> "Q. That's right. But here you had absolutely no guide whatsoever. A. Only as I say, the intelligence of a thinking, reasonable man, which, without flattery, I thought I was."

After hearing this testimony, the lower court summarized the examiner's statements in the following manner (fols. 9050-52):

> *"By the Court.*
>
> "Q. Mr. Haley, I am curious about this. I think you started off with the proposition, when you first went on the witness stand, that this is a case of novel impression. I mean there is no instance, in the State of New York, where an attempt has been made to dissolve or liquidate or rehabilitate an insurance company on the grounds set forth here. A. That's my understanding.

"Q. That's fairly accurate, isn't it, Mr. Williams?

"Mr. Williams: Yes.

"Q. So far as we know. *So, therefore, there was no basis for any objective standard by which you could judge whether or not this company, being a solvent company and a good, going concern, as you found in your first report, there was no objective standard by which to determine on what other grounds the company should be dissolved.*" (Emphasis added.)

The evil of this total lack of objective standards and criteria is compounded when the area of regulation is belief and opinion. For example, the examiner, conceding that "basically" he was "treating with questions of belief" (fols. 8912-13), stated that "It's hard to define the point beyond which the ordinary beliefs * * * are within the purview of the state law and where they are not" (fol. 9047).

Under the interpretation of the statute accepted below, the scope of permissible political beliefs, activities or affiliations rests solely upon the determination of individual officials without criteria to guide the courts in review. Under this interpretation, it is possible for individual state officials to determine which opinions of an officer of a fraternal benefit society are "un-American", which are "dangerous" (fol. 8795). Upon an individual officer's personal opinion of what benefits the working people, opinions and beliefs could be proscribed (fol. 9020). Upon his personal conception of what is "sneering" at government officials, criticism of public policies can become the basis for corporate destruction (fol. 9047).

If this liquidation were to be sanctioned, there would be no way of determining to what extent the power so granted to an administrative officer might be exercised. This time objection is made to a fraternal organization because of alleged "Communist affiliation"; the next time it may reach an organization with "socialist ideas", or any other views which the Insurance Department finds "immoral". See *Musser* v. *Utah*, 333 U. S. 95.

The total absence of any standards whatsoever in the Insurance Law to guide administrative or judicial officers within the area of press, speech and assembly, renders the statute as thus construed violative of the Fourteenth Amendment.

II

There was no evidence consonant with due process which could support a finding of "financial hazard" under the Second Ground of Liquidation.

The Superintendent, in his petition in support of the Second Ground, under Section 511(e), set forth only one fact, namely, the listing of petitioner as subversive by the Attorney General of the United States, with resulting decrease in membership from 183,000 to 162,000 (fol. 88). The remaining allegations are speculative, namely, that in the event of deterioration of relations with the Soviet Union petitioner's membership might decrease and its assets be used for the benefit of Soviet Russia (fol. 89).

There was no attempt by the Superintendent to establish any such loss of membership as to justify the inference that on this score there was any risk of insolvency. Surely he had that burden if he was to justify his dissolution on any such ground.

The effect of the Attorney General's list upon the IWO can be measured, of course, only from the year 1947, when the list went into effect, up to the institution of this proceeding in December 1950. In respect to the slight decline in membership which took place during these years, Examiner Haley had this to say upon the stand:

> "Q. Now, Mr. Haley, in your investigation and report you found, did you not, that there was some loss of membership on the part of the IWO during the years between 1947 and 1950? A. Yes.

"Q. And that gave you concern? A. Well, some, I would say. I hate to see any organization lose membership in general. That's a general statement.

"Q. Yes. You did not find that alarming in any way, did you? A. I did not particularly. They hadn't lost such a great amount" (fols. 8851-52).

It is highly significant in this respect that the slight drop in membership reflects the normal experiences of fraternal societies during those years. Respondent's Exhibits CE and CF reveal that there was a drop in membership during the same period for such diverse societies as the Workmen's Benefit Fund, the Association of Lithuanian Workers, the Independent Order of Brith Abraham, the Free Sons of Israel and the Catholic Benevolent Legion.

The years 1947 through 1950 were years during which the so-called Attorney General's list received tremendous prominence. And yet the record reveals that during these years the assets of the organization steadily grew. From $4,678,039.37 in 1947, the assets of the IWO grew to $6,-670,747.64 in 1950 (Resp. Ex. JN).

As to the rest, it is all speculation. Not one iota of evidence was introduced that any of the officers had misappropriated funds of the Order for Communist purposes. All that Justice Greenberg could say was "it is not beyond the realm of reasonable probability" that the funds of the Order would be "expropriated" (!) in case of conflict between the United States and "the world of Communism" (fol. 1646). And the Appellate Division said (fols. 12632-33) that there was "reason to believe" that under Communist discipline the officers would not hesitate to use funds of the Order for Communist purposes. The Court of Appeals made no specific comment on this phase of the case.

We submit that such mere speculation cannot constitutionally justify dissolution of the Order. It indulges in presumptions which violate the first canons of due process.

Thus, the Appellate Division concluded that since there was no evidence in the record of any financial irregularity or potential irregularity on the part of the officers of the corporation, it would *presume* as a matter of law and judicial notice that "Communist organizations" may be financially unreliable in the remote future. The opinion of Justice Van Voorhis in the Appellate Division held:

> "There is nothing which indicates, to be sure, that the officials of IWO would steal funds of the organization for their personal advantage; there is reason to believe, however, that, acting subject to the discipline of the Communist Party and the Politburo in Soviet Russia, they would not hesitate to do so for the Party under orders. From litigation in the courts, and from public knowledge of facts concerning which we are required to take judicial notice (Nankivel v. Omsk All Russian Gov't, 237 N. Y. 150; St. Nicholas Cathedral v. Kedroff, 302 N. Y. 1, 23), it has become increasingly apparent that, when it is considered to be in the interest of Communist organizations to make payment for obligations incurred in commercial transactions in the United States, the money is available to meet them, but that when it is thought otherwise, the necessary funds vanish and can be located and attached only with the utmost difficulty * * *" (fols. 12632-34).

The lower courts have conceded that there is no independent evidence in the record upon which a finding of financial or potential financial hazard could be grounded. Instead, the lower courts have indulged in a presumption which violates the most elementary concepts of due process of law. *Kedroff* v. *St. Nicholas Cathedral,* 344 U. S. 94; *McFarland* v. *American Sugar Refining Co.,* 241 U. S. 79.

In *Buchalter* v. *New York*, 319 U. S. 427, Mr. Justice Roberts said:

> "The due process clause of the Fourteenth Amendment requires that action by a state through any of its agencies must be consistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which not infrequently are designated as 'the law of the land'" (p. 429).

Nothing is more fundamental to these institutions than the principle that no one may be judicially condemned (whether in a civil or criminal case) except on the basis of evidence. Condemnation because of suspicion, particularly when engendered by hostility to the opinions espoused by the suspected party, is anathema. These remarks are particularly pertinent here.

III

There was no evidence consonant with due process which could support a finding of "violation of law" under the Third Ground of Liquidation.

We submit that there was no evidence whatever justifying the inference that petitioner advocated the overthrow of the government by force. Under New York law a proceeding to dissolve a corporation because of violation of law must be based on such a violation within two years preceding the institution of the proceeding (New York C. P. A. Sec. 55, sub. 2; *People* v. *Society of St. Joseph Palo del Colle, Italy, Inc.*, 177 Misc. 419; *Van Schaick* v. *Cronin*, 237 App. Div. 182). Petitioner, in its motion to dismiss the proceeding, had raised the statute of limitations (fol. 800).

This defense was brushed aside by Mr. Justice Greenberg (fol. 1679) by the comment that there was a "course of

conduct", but was not discussed either in the Appellate Division or the Court of Appeals. We submit that since no conspiracy was here charged the course of conduct theory is wholly inapplicable, but that in any event, under New York law, it would have been necessary to show an overt act within the period (*People* v. *Hines,* 284 N. Y. 93).

The only evidence which could possibly be relied on by the Superintendent to overcome the effect of the statute of limitations was that of Cvetic, who testified that he saw "displayed" in some unspecified lodge in Western Pennsylvania certain Communist periodicals such as the *Daily Worker* and four so-called Marxist classics (fols. 7246-56). But he was unable to say which literature he saw when, for he was testifying "on the basis of attending some 3,000 meetings in nine years" (fol. 7254). As support for the charge that petitioner violated the criminal law this evidence is wholly worthless. Cvetic did not even testify that these four books were "sold" or "distributed". He did not testify that anyone in an IWO lodge urged that they be read, or even called attention to them. He certainly did not testify that the IWO or an officer urged that they present a "guide to action" for the IWO (compare *Dennis* v. *United States,* 341 U. S. 494). All he said is that these four books were "displayed"!

Reliance on such evidence would be inconsistent with the positions taken by District Courts under Smith Act prosecutions, compare *U. S.* v. *Schneiderman,* 106 F. Supp. 906, 937.

Indeed the most that the Superintendent claims with respect to any period of the Order's activity is that it followed the line of the Communist Party. The proof is not that the Order advocated the overthrow of the government by force, but that the Party did. It is then contended that since the Order was an agency of the Party it too has violated the criminal law. That is indeed guilt by association

with a vengeance, which has never been tolerated by this Court (cf. *deJonge* v. *Oregon*, 299 U. S. 353; *Wiemann* v. *Updegraff*, 344 U. S. 183).

At best, five of the Justices have expressed the view that membership in the Communist Party is not the equivalent of membership in an organization which advocates the overthrow of the government by force, absent proof that the individual had knowledge of such illegal advocacy by the party (Justices Black and Douglas in *Schneiderman* v. *United States*, 320 U. S. 118; the Chief Justice and Justices Reed and Minton in *Bridges* v. *United States* 345 U. S. at .*) And presumably the entire court concurred in the reservation expressed in *Garner* v. *Los Angeles*, 341 U. S. 716, 720, as to the power of a municipality to dismiss for mere Communist Party membership, there described as "political affiliation". As the Court unanimously declared in *Wiemann* v. *Updegraff*, 344 U. S. 183, an oath offended due process which disqualified employees from innocent association with various organizations, including the Communist Party.

Here there is absolutely no evidence of knowledge on the part of any of the present officers of petitioner that the Communist Party advocates illegal doctrine.

Moreover, the *Dennis* case, *supra*, makes it perfectly clear that even advocacy of the forcible overthrow or possession of books so advocating cannot constitutionally be punished absent an intent to bring about forcible overthrow as speedily as circumstances would permit. There is not an iota of testimony here of any such intent.

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* Unofficially reported at 73 Sup. Ct. 1055, 1068.

IV

Liquidation based upon the Third Ground is inconsistent with the principles established by this Court in *Dennis* v. *United States*.

This Court, in the *Dennis* case, 341 U. S. 494, affirmed the conviction of the leaders of the Communist Party on a finding that they had conspired to advocate the overthrow of the government by force under circumstances that created a clear and probable danger that such overthrow would be attempted and after a jury finding that they intended to bring about such overthrow as speedily as conditions would permit. Absent these considerations the statute involved would have been considered an unconstitutional interference with freedom of speech.

To justify dissolution under the Third Ground the Superintendent has relied on the identical statute there involved (18 U. S. C. 2385) and on a substantially similar state law (Penal Law §§ 160, 161). That state law was the basis for the prosecution in the *Gitlow* case (268 U. S. 652)—a prosecution which this Court has now found to have been in violation of constitutional guarantees.

In the case at bar there was not the slightest attempt made to conform to the standards which alone will save from constitutional infirmity any law which deals with expression of opinion. The opinion of Mr. Justice Greenberg will be searched in vain for any recognition that such standards are appropriate. All that he said with regard to this ground of liquidation is that if the leaders of the Communist Party could be prosecuted, then "the IWO by its active participation in the program of the Communist Party with full knowledge of its nature may be found to have offended similarly" (fol. 1653). He referred to the harm which might result were a prosecution attempted, but made no attempt to determine that those elements existed without which no prosecution could be successful.

The Appellate Division recognized the weakness of this branch of the case, for it expressly stated that there was not enough evidence to justify the finding that any officer of petitioner had violated either law (fol. 12647). The Court of Appeals ignored the subject altogether.

Under these circumstances any judicial determination of dissolution conflicts with the principles announced by this Court.

V

Reliance by the Court of Appeals upon New York Penal Law § 671 violates due process.

The Court of Appeals in part rested its affirmance of the order of liquidation on alleged violation by petitioner of Penal Law § 671 which prohibits political contributions by a corporation. But here there was neither charge nor proof that petitioner had violated this provision of law. No reference to it will be found anywhere in the long record or in the voluminous briefs.

This is "sheer denial of due process" in conflict with *deJonge* v. *Oregon*, 299 U. S. 353, and *Cole* v. *Arkansas*, 333 U. S. 196.

VI

There was no evidence consonant with due process which could support a finding of "charter violation" under the Fourth Ground for Liquidation.

It is difficult to understand the basis on which the state courts have proceeded in reaching the conclusion that petitioner had violated its charter. There is no dispute whatever that it has conducted a successful insurance business and has developed a flourishing fraternal order. The sole basis is that the Order was a medium of Communist propa-

ganda (fol. 790). But surely every fraternal order expresses some point of view.

The extent to which the courts of New York have departed from accepted principles of law in stretching the statute to fit this case will be apparent from a consideration of the earlier cases and authorities.

The law is clear as to corporations in general, that dissolution should not be ordered absent a number of factors. As stated by Fletcher in *On Corporations,* Vol. XVI, § 8056:

> "To constitute a misuser of the corporate franchise such as to warrant its forfeiture the *ultra vires* acts must be so substantial and continued * * * and so derange or destroy the business of the corporation that it no longer fulfills the end for which it was created. *State* v. *Minn. Thresher Manufacturing Co.,* 40 Minn. 213, 226."

Fletcher continues:

> "Moreover, *ultra vires* acts may be such as to warrant injunctive relief at the suit of the state and yet not be grounds for a forfeiture at the suit of the state."

Cf. Note, 47 Mich. L. Rev. 713, where it is said:

> "To justify forfeiture, the violation of the corporate franchise must be so substantial and continued as to frustrate the purpose for which the corporation was created * * *. The issue is whether the activities complained of frustrate the purpose for which the corporation was created.
>
> * * * * * *
>
> "Even though the corporation has committed criminal acts, forfeiture should not ensue unless the corporate purpose has been frustrated."

All the cases stress the rule that a corporation should not be dissolved unless "its further continuance in business would defeat the object of its creation." *Chicago Life Ins. Co.* v. *Needles,* 113 U. S. 574.

And it must be shown that the abuse of the charter is of a current and continuing nature. *People* v. *Ulster & Del. Ry. Co.*, 128 N. Y. 240.

The record is bare of evidence to show that continuance of petitioner's business would defeat its corporate purpose.

Petitioner's charter provides that the purposes and particular objects for which the corporation was formed are "to promote fraternal intercourse among the members; to assist its members in cases of sickness or disability and their families dependent upon them in need and distress resulting from such sickness and disability of such members"; "to further benevolence and to allay poverty amongst those that are dependent upon its members for their maintenance and support by establishing a sick fund and also a beneficiary fund from which, upon the death of any member in good standing, the beneficiary named in the membership certificate or policy issued to the deceased member shall draw an amount not exceeding the sum designated therein" (fols. 126-28).

It would be difficult to argue that a corporation which has paid out $739,307.62 in death benefits during the year 1950; $360,812 in sick and accident benefits; and $674.01 in matured endowments, totaling $1,110,793.63 (Resp. Ex. KD, p. 3) is not assisting "its members in cases of sickness or disability and their families dependent upon them in need and distress." It would be equally difficult to argue that a fraternal benefit society which has over the years of its existence from 1930 to 1949 paid out a total of $13,654,325.74 in benefits to its members (Resp. Ex. JY) has been frustrated and prevented in its attempt to "further benevolence and to allay poverty amongst those that are dependent upon its members for their maintenance and support."

There is no proof that the activities complained of have frustrated or destroyed the purpose of the IWO in building a society to carry out the stated purposes of its cor-

porate charter. Quite to the contrary, the complaint in essence is that the IWO has been too successful in achieving these ends, since its members may be unduly influenced to follow the alleged opinions of its officers because of the excellent manner in which it has fulfilled its corporate function.

How can it be argued that such a corporation has been frustrated in its primary purpose of providing benefits to its members? This is a carrying out of its charter (see fols. 126-27), not a violation of it.

The record cannot support a finding that the activities of the corporation constituted a violation of its charter. In essence, the Superintendent's case rests upon the assumption that the following types of activities constitute a violation of its charter: (1) general support of a political party (fols. 1562-66); (2) support of certain political newspapers (fols. 1567-68); (3) participation in a voluntary campaign to raise money for individuals indicted under the Smith Act (fol. 1571); (4) distribution of certain literature and the teaching of certain doctrine (fols. 1572-75); (5) participation in such activities as the Stockholm Peace Pledge, the Scottsboro defense, campaigns for better working conditions, social legislation and the campaign to outlaw the atom bomb and opposition to military expenditures (fol. 1577).

So long as these activities are not illegal, no administrative officer or judge in this country, under our system of government, has any right, duty or power to decide for any citizen what is "educational" or "patriotic". See *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624.

It is ironic indeed that the Superintendent and the state court seek to liquidate and dissolve the organization precisely because it did carry out "educational" activities. The only justification for the position taken by the Superintendent and the trial court was that they did not agree

with the education offered. The Superintendent's examiner was unhappy because the IWO "educated" its members along the lines of "class consciousness." The Superintendent was disturbed because the IWO used certain books in its classes. The trial court did not consider that it was "patriotic" to oppose entry into the last war in its early stages and support our government after Pearl Harbor. The trial court may not have believed that it is "patriotic" to support the defense of individuals indicted under a peacetime sedition statute, the Smith Act.

Hundred of thousands of Americans have in every instance above mentioned disagreed with both the Superintendent and the trial court in respect to their understanding of the meaning of the words "educational" or "patriotic". This disagreement is the essence of Americanism.

This Court is not blind to the fact that fraternal societies have traditionally engaged in every type of "public" or "political" activity. Fraternal benefit societies are not merely insurance companies. They are associations of individuals gathered together for their mutual protection and participate in the fullest way in every aspect of the life of the community. Some represent political opinions on the Right (Resp. Exs. CO, CP), some represent political opinions on the Left (Resp. Exs. CK, CM). Some are devoted to "free enterprise" principles, some of the oldest and most respected pledged themselves in their constitutions to "socialist" principles (Resp. Ex. CL). Many fraternal societies reflect all shades of opinion, all engage in different activities from time to time reflecting the interests and desires of their membership at that moment. Until this case, no one has ever dared to dictate to a fraternal society what the substantive nature of its "educational" activity should be. No one ever thought that that was within the province of a state official. The essence of the charge of charter violation is the disapproval of the nature of the "education" carried on by this society.

VII

The affirmance of liquidation by the Court of Appeals without an opportunity for a hearing on reinsurance violates due process.

Petitioner maintained throughout the proceedings below that the decree of liquidation and dissolution would result in the destruction of valuable insurance property without due process of law, in that reinsurance of the present insurance contracts under comparable terms and conditions was impossible (fols. 1445-46, 12333-51).

At the argument before the Court of Appeals, counsel for the Superintendent, without notice to the petitioner and without an opportunity for cross-examination, made the assertion to the court that he had been authorized to state by the Superintendent of Insurance that arrangements had already been made for the reinsurance of "all policy holders", that there are "companies prepared to issue insurance on the same basis as those insured now enjoy" and that "every member of the IWO will be insured on substantially the same contract" as he now has.

The Court of Appeals placed great weight upon this declaration by the Superintendent, commenting on it in full in its opinion affirming the order of liquidation. The state court relied upon this unilateral statement to dispose of petitioner's argument that the remedy of liquidation would cause undue hardship to the many thousands of policy holders. Petitioner had no opportunity whatsoever to challenge or meet this assertion by the Superintendent.

The statute requires, as indeed it must consistent with constitutional requirements, that an order of liquidation be entered only after a "full hearing" before the State Supreme Court. The reliance by the Court of Appeals upon the *ex parte* statement of the Superintendent *dehors* the record, negates the requirement that liquidation be

entered only after a "full hearing" and violates petitioner's right to due process of law.

VIII

The remedy of liquidation and dissolution offends against the most elementary concept of due process of law.

Due process requires that sanctions imposed in an administrative process must be remedial in form and not punitive. A remedy may not be grounded upon facts not demonstrated to be current. It may not seek to cure an evil which is not plainly shown to be in existence at the time the remedy is prescribed. Retroactive remedies are condemned as vindictive and punitive. A remedy may be applied consonant with due process only if that remedy is grounded upon and has a reasonable relationship to the actual conditions as shown in the record. *NLRB* v. *Express Publishing Co.*, 312 U. S. 426; *May Department Stores Co.* v. *NLRB*, 326 U. S. 376; *NLRB* v. *Flotill Products*, 180 F. 2d 441 (CA 9); *Ford Motor Co.* v. *F. T. C.*, 120 F. 2d 175 (CA 6).

In *May Department Stores* this Court indicated the limitations placed by the concept of due process upon the scope of an administrative remedy:

> "The test of the proper scope of a cease and desist order is whether the Board might have reasonably concluded from the evidence that such an order was necessary to prevent the employer before it 'from engaging in any unfair labor practice affecting commerce' ". (At p. 390.)

Due process of law requires that remedial orders may go no further than reasonably necessary "to correct the evil complained of and preserve the right" of the parties involved. See *Ford Motor Co.* v. *F. T. C.*, *supra*.

When measured by these standards the decree of liquidation and dissolution of petitioner violates the guarantees of due process of law. The record fully reveals that the remedy of liquidation and dissolution is neither necessary to correct any of the alleged evils nor does it have a "reasonable relationship" to the actual conditions found to exist.

The Superintendent's petition rests exclusively upon alleged political expressions, activities and affiliations of certain of petitioner's officers past or present. Most of these expressions were alleged to have occurred over 15 years ago. To liquidate and destroy an association of 160,000 because of the alleged political expressions of a few, the evidence of which is dredged to a large extent from the remote past would be to violate elementary concepts of due process, and would unnecessarily punish thousands of individuals for the alleged acts or opinions of a few. See *Kotteakos* v. *United States,* 328 U. S. 750.

The main ground for liquidation which remains after the elimination of the concept of "political hazard" is the charge of potential "financial hazard." We have demonstrated in full the complete insufficiency of such a ground and the total lack of evidence to support such a charge (*supra,* at pp. 21-24). However, even if it could be assumed that such a ground could be maintained consistent with the requirements of due process, the remedy of liquidation and dissolution bears no reasonable relationship to the facts upon which the charge rests.

Upon such a record, liquidation and dissolution which penalizes 160,000 individual Americans and their families, seriously jeopardizing millions of dollars of valuable insurance property, cannot by any stretch of the imagination be considered to be a "necessary" or "reasonable" remedy. The Superintendent of Insurance, in fact, never concerned himself with "necessary" or "reasonable" remedies. He never attempted to invoke sections of the statute

which would have permitted remedial relief short of the corporate death sentence of dissolution (fol. 2054).

The failure of the Superintendent to explore any avenues of remedial relief underscores the conclusion that flows from all of his arguments and approaches in this proceeding. He has never been concerned with remedies which reflect the constructive objectives of the statute. He has pursued relentlessly the goal of total liquidation and dissolution of this society in complete conflict with the statutory mandate of conservation and preservation.

The order of liquidation sanctions the imposition of the corporate death sentence upon an association of 160,000 men, women and children. The rights and properties of thousands of families are here at stake. To many of these families liquidation and dissolution of the IWO would mean the loss of invaluable insurance property; to some, old, infirm or disabled, it would mean the total exclusion from any further opportunity to obtain insurance protection; to all of these families liquidation and dissolution of the IWO would mean the destruction of a fraternal life of their own choosing, rich with the warmth of cultural and social values.

This imposition of indiscriminate mass punishment upon 160,000 Americans and their families offends against the most elementary principles of justice and fair play which we have come to associate with the fundamental guarantee of due process of law.

CONCLUSION

No legislature in this country, neither the Federal Congress nor any state legislature, has until now sanctioned a policy permitting the liquidation and dissolution of otherwise lawful associations and organizations of the American people because of the expression of political

opinions, ideas and beliefs. The very enactment of such a policy would lead to serious and profound constitutional issues.

This petition thus places before this Court a grave question of constitutional liberty. The liquidation and dissolution of organizations and associations of Americans for reasons of their political beliefs, opinions or affiliations has hitherto been a concept alien to our democratic way of life. This Court should exercise its traditional function as a guardian of the civil liberties of the people and review this unprecedented departure from our normal political conduct.

Respectfully submitted,

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APPENDIX A

Statutes Involved

New York Insurance Law, Section 511(e) and (f):

§ 511. Grounds for rehabilitation of domestic insurer.

The superintendent may apply under this article for an order directing him to rehabilitate a domestic insurer upon any one or more of the following grounds: that such insurer * * * (e) is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public; or (f) has wilfully violated its charter or any law of the state.

New York Insurance Law, Section 513:

§ 513. Grounds for liquidation.

The superintendent may apply under this article, for an order directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this state, upon any one or more of the grounds specified in section five hundred eleven, regardless of whether or not there has been a prior order directing him to rehabilitate such insurer.

Section 2 of Alien Registration Act of June 28, 1949, c. 439, Title I, 54 Stat. 670 (18 U. S. C. 10, new Title 18, Sec. 2385).

Section 2. (a) It shall be unlawful for any person—

1. to knowingly or wilfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by the assassination of any officer of any such government;

2. with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United United States by force or violence;

3. to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.

(b) For the purposes of this section, the term "government in the United States" means the Government of the United States, the government of any State, Territory, or possession of the United States, the government of the District of Columbia, or the government of any political subdivision of any of them.

New York Penal Law, Sections 160, 161.

§ 160. Criminal anarchy defined.

Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means. The advocacy of such doctrine either by word of mouth or writing is a felony.

§ 161. Advocacy of criminal anarchy.

Any person who:

1. By word of mouth or writing advocates, advises or teaches the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means; or,

2. Prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document, or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or,

3. Openly, wilfully and deliberately justifies by word of mouth or writing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or of any state or of any civilized nation having an organized government because of his official character, or any other crime, with intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or,

4. Organizes or helps to organize or becomes a member of or voluntarily assembles with any society, group or assembly of persons formed to teach or advocate such doctrine.

Is guilty of a felony and punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

New York Penal Law, Section 671.

§ 671. Political contributions prohibited; penalty.

No corporation or joint-stock association doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, or in aid of, any corporation, joint-stock or other association organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stockholder, at-

torney or agent of any corporation or joint-stock association, which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor and punishable by imprisonment in a penitentiary or county jail for not more than one year and a fine of not more than one thousand dollars. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence documentary or otherwise, required of him may tend to incriminate him or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. Added L. 1928, c. 792, eff. Oct. 1, 1928.

APPENDIX B

List of witnesses called by the Superintendent of Insurance with the dates of the period covered by their testimony.

George E. Powers, 1934-39 (fols. 2375, 2549).
Manning Johnson, 1932-38 (fols. 3571, 3800).
Joseph Zack Kornfeder, 1932-34 (fol. 4091).
Sylvia Crouch, 1932-33 (fols. 4520, 4691); 1941-42 (fol. 4520).*
Charles H. White, 1931-36 (fols. 5107, 5178).
Charles Baxter, 1930-35 (fols. 5363, 5414).
Howard Rushmore, 1937-39 (fol. 5612).
Simon Weber, 1932-36 (fol. 5792).
Thadeus Zygmont, 1933-37 (fols. 6158, 6206).
John L. Leech, 1933-36 (fol. 6407).
John T. Pace, 1931-35 (fol. 7002).
Matthew Cvetic, 1944-49 (fols. 7043, 7237).
Louis F. Budenz, 1937-45 (fols. 7549, 7568).

* The testimony relating to this latter period was inconsequential.

APPENDIX C

Comparative Table of Membership Losses Based upon Respondent's Exhibits CE and CF

	Benefit Membership		
	December 31, 1947	*January 1, 1950*	*Percentage Loss*
International Workers Order	183,491	162,630	11.4
Association of Lithuanian Workers	8,640	8,137	5.8
Independent Order of Brith Abraham	13,406	11,109	17.1
Catholic Benevolent Legion	2,332	2,120	9.1
Free Sons of Israel	3,103	2,868	7.6
Workmen's Benefit Fund	61,130	58,127	4.9

APPENDIX D

Report of the Superintendent of Insurance of the State of New York to the Legislature, 1941.

SUPERINTENDENT OF INSURANCE

INSURANCE AND POLITICS

In previous national campaigns there has been an occasional reference to insurance. This was true in 1936 when Frank Knox, then candidate for Vice President, raised the issue. But neither then nor at any other time has it been a serious matter, nor has insurance been a major issue. It is unfortunate and yet understandable that in the 1940 campaign, devoted so largely to economic issues, insurance was pushed to the front.

Most of those holding the higher positions in the industry are undoubtedly sincerely of the belief that some of the administration policies are inimical to the best interests of the institution, but the majority of policyholders may have different views.

Leaflets were widely circulated implying that insurance would be unsafe if the President were reelected. It was also charged that some of the responsible people in insurance companies used or permitted the use of the companies' facilities to further political interests. Complaints were received by the Department and we were requested to take drastic action to stop such activities. As the campaign had not long to run it was our opinion that we could not possibly get to the bottom of the situation in the short time that remained and that any action on our part would be considered political in its nature and would do more harm than good. We did believe, however, that the situation was of very real importance and that we should look into the matter thoroughly as soon as the election passed.

Immediately after the election one of our experienced examiners was requested to investigate the activities of the companies and to secure all the factual evidence which he could. Arrangements were made to have him go through the data of the Gillette Committee at Washington and he was accorded free access to the minutes, all of the evidence taken and all exhibits received. He visited the companies which were suspected of participation, examined their records and interviewed those individuals who had knowledge of the situation. Among the companies or agencies examined were the following:

Guardian Life Insurance Company of New York
Aetna Life Insurance Company of Hartford, Connecticut
(Luther Agency, New York City)
Prudential Insurance Company of America
(Eubank Agency, New York City)

The report of the examiner is in part as follows:

"This investigation revealed that during the recent campaign, the Guardian Life Insurance Company of New York received a request from one of its branch agency managers for permission to use the home office facilities and stencil imprints of policyholders' names in connection with the distribution of campaign literature. It is said that tentative approval of this request was given subject, however, to concurrence in the approval by the company's general counsel. Company officials admit that the work of addressing the campaign literature was actually started but state that the general counsel declined to permit the extension of the service even though the information and facilities had been made available to the manager who requested them. The company further advises the material that had already been imprinted was confiscated and destroyed. Filed with the papers of this investigation are sworn statements made by the agency manager in-

volved and signed statements of the president and general counsel of the company wherein it is unequivocally declared that no campaign material imprinted by the Guardian's addressograph was ever mailed or distributed by the company or any of its agencies' offices.

"Investigation of the accusations pertaining to the Aetna Life Insurance Company (Luther Agency), and the Prudential Insurance Company of America (Eubank Agency) reveals that while both of these agencies admit the mailing and dissemination of a limited amount of literature, they state that at no time did they circularize company policyholders or use company facilities. It is said that the work was done at the expense of the individuals interested in their capacity of private citizens. While it is admitted that the work was done by agency employees it is said to have been done after office hours. In this connection it may be observed that, aside from any question as to the veracity of these statements, the work was actually performed in offices of insurance companies, even though they are claimed to be personal offices of the general agents.

"While the facts pertaining to the Guardian Life Insurance Company, the Luther Agency of the Aetna Life and the Eubank Agency of the Prudential may not be adequate to establish violation of law, their activities nevertheless are definitely in poor taste and not conducive to the maintenance of confidence in the institution of life insurance. Without questioning the right of any individual, in his capacity of private citizen, to engage in campaign activities, the propriety of such activity becomes questionable when indulged in by agents or officials of life insurance companies in the offices of such companies.

"Although the above situation pertaining to company and agency activity in campaigns is reprehensible, by far the more serious aspect of the situation appears

in the work of the so-called Peoples Committee to Defend Life Insurance and Savings. This committee maintains executive offices in Philadelphia, Pa., and is not an accredited representative of any branch of the insurance business or of any group of companies. This committee has circulated a number of pamphlets and other forms of literature unquestionably designed to excite the fears of owners of life insurance by telling them, among other things, that their life insurance investments would be jeopardized under a continued Democratic administration, that the value of life insurance during the past eight years has diminished by 50% and that life insurance companies are in a tottering financial condition.

"While the committee appears to be outside the jurisdiction of the New York law by reason of its domicile in the State of Pennsylvania, it is of interest to note that the following named individuals, all of whom appear to be situated in this state, are listed as members of the Executive Committee:

Robert E. Smith, Secretary
123 Liberty Street
New York City

Samuel H. Beach, President
Rome Savings Bank
Rome, New York

Morris Benjamin
Benjamin, Hill and Co.
Stockbrokers
50 Broadway
New York City

Louis K. Comstock
Merchants Association
71 Broadway
New York City

T. M. Smalley, President
Glens Falls Insurance Company
Glens Falls, New York

"The literature is obviously inflammatory and in all probability was distributed through the mails to life insurance policyholders, insurance agents, bankers and other professional people."

There has been some criticism because the president of the Mutual Life Insurance Company took an active part in the campaign and was one of the organizers of a committee for the election of Mr. Willkie. Speeches were made and articles were written by him and the fact that he was president of the company was noted prominently in the press in connection with this activity.

The mixing of politics with certain professions and businesses which represent all of the people and which are essentially non-political in their nature is often harmful. For instance, politics does not mix too well with the church—or with education—and life insurance is pretty much in the same category. If life insurance meddles in politics it will become difficult to keep politics out of life insurance. Political interference is an incentive to further governmental regulation and control.

On the other hand, there can be no question but that the president or any other official of a life company has an absolute right to express his political opinions and even enter a political campaign if he believes it in the interests of the public and the country. No limitation on this right can or should be made or is here intended.

There is no question but that President Douglas made sincere efforts to make it clear that his company as such was not engaged in political activities. His speeches reflected statesmanship, tact and good spirit. But it is next to impossible to disassociate a great life company from the individual who heads it.

Statements were also made to the effect that the Security Mutual Life Insurance Company of Binghamton had participated in the political activities of the National Confer-

ence of Investors, an organization of holders of railroad securities. An examiner was sent to Binghamton to investigate this charge. He found that the company had not permitted the use of any of its records or facilities and that the company's president, F. D. Russell, had given but a small amount of his time.

On Election Day President Leroy A. Lincoln of the Metropolitan Life Insurance Company prepared a strong telegram to the company's field men and employees which was sent out the following day. After referring to the injection of insurance into the campaign and disclaiming any responsibility for it on the part of the Metropolitan, Mr. Lincoln pointed out that the company had spent no money either directly or indirectly in connection with the election nor had it given out a list of policyholders or the name of a single policyholder to anyone. He further stated:

> "It has been the settled and considered policy of our company, in the interest of its policyholders, to abstain from participation in any manner whatsoever in political campaigns and activities, and this policy has always been and is rigidly adhered to."

The message was democratic in spirit and contributed to a healthy post-election outlook.

Our laws are already very broad and strict and many other states have similar statutes. The Penal Law provides that any person who wilfully or knowingly circulates any statement or rumor, either printed or by word of mouth, which is untrue and which is derogatory to the financial condition or affects the solvency or financial standing of any insurance company doing business in the state is guilty of a misdemeanor.

In addition Section 671 of the Penal Law provides:

> "No corporation or joint stock association doing business in the state, except a corporation or association

organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, or in aid of, any corporation, joint-stock or other association organized or maintained for political purposes, or for, or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used."

The question arises as to whether the statute as it stands is sufficiently strong or whether more specific prohibition of the use of company time, funds, lists of policyholders, clerical assistance, the solicitation of contributions from employees and other activities is necessary.

There is no direct prohibition against political activity in the Insurance Law but the provision in the Penal Law is so comprehensive that it would seem needless and perhaps confusing to duplicate it. Rather than recommend duplication of legislation we are hopeful that the publication of this report, which will be called to the personal attention of the officials of all insurance companies, will be effective in preventing any violation of the letter or even the spirit of the law in the future. We are not so much interested in what took place in the past as in preventing dangerous tendencies from developing in the future.

Spreading the facts before the public may influence those who conduct insurance companies to be more careful in the future with respect to the proprieties and the spirit of the law. Strict compliance with the law is undoubtedly not only in the general interest but is of particular importance to the great institution of insurance, which is custodian and trustee of so much of the public's funds.